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502, 63 S. W. 112; *Macke v. Byrd*, 131 Mo. 682, 33 S. W. 448; *Green v. Marks*, 25 Ill. 221. But see *Blythe v. Gash*, 114 N. C. 659, 19 S. E. 640; *Moore v. Smead*, 89 Wis. 558, 62 N. W. 426. However, at law, by the purchase of the land at the foreclosure sale, the widow secured the legal fee, and her own life estate in the homestead right merged therein and was lost. And the children's estates, being subject to the deed of trust, were destroyed by the sale. Consequently, although the widow might claim as the head of a family a new homestead exemption for herself and children against all future creditors, the newly-acquired estate in fee must be subject to an execution in favor of the plaintiff, an antecedent judgment creditor. In substance, however, the purchase by the widow is a redemption of the homestead for herself and her children. For practical reasons it may have been more advantageous, or even necessary, for her to buy in the property at the sale rather than to pay off the indebtedness. But the same substantive result is effected, and the same legal consequences should follow, whichever form of redemption is used. So equity, looking at the substance of the transaction, will prevent the merger of her homestead rights in the fee simple. See *Smith v. Roberts*, 91 N. Y. 470; *Swinfen v. Swinfen*, 29 Beav. 199. See 2 POMEROY, Eq. JURIS., §§ 790-793. Upon this principle, the homestead right acquired through her husband may still be asserted by the widow against the plaintiff. And the children's estates, though destroyed at law by the mother's purchase, should be given effect in equity in like manner as if the mother had redeemed by paying off the indebtedness. Such was the substance of the transaction. See *Ailey v. Burnett*, 134 Mo. 313, 33 S. W. 1122; *Drake v. Kinsell*, 38 Mich. 232, 237; *McCreary v. McCorkle*, 54 S. W. 53 (Tenn. Ch.). Nor can the mother be heard as against her children to deny that her purchase was a redemption for their benefit. She owes them a fiduciary duty of care and protection and she can in no way prejudice their rights in their father's homestead. See *Phillips v. Pressor*, 172 Mo. 24, 72 S. W. 501; *Gorman v. Hale*, 109 Mo. App. 176, 82 S. W. 1110. Hence their interest survives and is not subject to this execution. Although the case is one at law, in code states where law and equity are administered by the same courts, there can be no objection to cutting cross-lots to secure a result on a law suit which would formerly have called for a separate proceeding in equity. Nor can the interest in fee in the homestead be sold on execution, subject to the homestead rights of the widow and children. *Armor v. Lewis*, 252 Mo. 568, 583, 161 S. W. 251; *Moore v. Wilkerson*, 169 Mo. 334, 337, 68 S. W. 1035.

**INSURANCE — MURDER BY BENEFICIARY — RIGHT TO PROCEEDS.** — The beneficiary of a life insurance policy murdered the insured. The victim's son and the beneficiary are the sole statutory heirs. The son brings an action on the policy. *Held*, that he recover. *Sharpless v. Grand Lodge A. O. U. W.*, 159 N. W. 1086 (Minn.).

For a discussion of the principles involved in this case, see NOTES, p. 622.

**INTERNATIONAL LAW — ADMIRALTY — ENEMY PROPERTY.** — Goods were seized *en route* from Copenhagen to the United States on a Danish vessel. They were manufactured to order in Germany and the neutral claimant contended that title passed to him when they left the factory. The Crown claimed them as enemy property under the Order in Council of March 11, 1915. *Held*, that the goods were enemy property. *The United States*, [1917] p. 30.

The order in question provides for the seizure of enemy property on the seas. What constitutes enemy property the court declared is decided according to the international law of prize. In support of its decision it applied the doctrine of transfer of title *in transitu*. This doctrine holds that goods which have been shipped as the property of the enemy seller cannot on the voyage be transferred to the neutral buyer so as to avoid capture, but there must be an actual delivery of possession. See *The Baltica*, 11 Moo. P. C. 141, 145. See PRATT, STORY ON

PRIZE COURTS, 64. This principle is not applicable, however, where the title has vested in the neutral buyer before shipment. Thus when enemy goods were consigned to a neutral buyer as his property and at his risk, they were not confiscated. *The Herman*, 4 Rob. 228. Similarly, enemy goods shipped to a neutral buyer by an agent representing him in the enemy country have been held to lose their enemy character. See *The San Jose Indiano and Cargo*, 2 Gall. 267, 291. This was held true even when an enemy firm acted as agent or shipper for the neutral buyer. See *The Portland*, 3 Rob. 41-44. Perhaps all decisions as to goods from a belligerent country with title in a neutral are not entirely reconcilable. See 7 MOORE, DIGEST OF INTERNATIONAL LAW, §§ 1183, 1184, 1185. But it would seem that a doctrine concerning the passing of title to ships and goods on ships *in transitu* can hardly support the confiscation of goods title to which is claimed to have passed before shipment.

INTERSTATE COMMERCE — DISCRIMINATORY RATE — BURDEN OF PROOF. — Shippers of the town of Rockport, Illinois, filed a complaint before the Interstate Commerce Commission alleging that the defendant's rate on certain goods from Rockport to St. Louis was "unduly discriminatory in violation of sections 2 and 3" of the act to regulate commerce. The rate was increased shortly after the filing of the complaint. *Held*, that the burden is on the defendant to show that no unjust discrimination exists. *Burson Knitting Co. v. C. M. & St. P. Ry. Co.*, 42 Int. Com. Rep. 739.

At common law there is no underlying principle which will enable one to determine in a given issue on whom the burden of proof shall fall other than the general one of fairness based on experience. See 4 WIGMORE, EVIDENCE, § 2486. The Commerce Commission follows the courts in this matter. See JUDSON, INTERSTATE COMMERCE, 3 ed., § 440. Were the act to regulate commerce silent on the question, fairness would seem to demand that the carrier on increasing its rate should not be called upon to show that no one or no locality of possible hundreds was discriminated against. It should not have to prove a general negative. Even if a specific locality complains of such rate there is no reason why the complainant should not be left to establish its case. There are no presumptions arising from the long standing of the previous rate. *People ex rel. N. Y. C. & H. R. R. Co. v. P. S. Comm.*, 215 N. Y. 241, 109 N. E. 252. Nor is there any presumption of wrong arising from a changed rate. *I. C. C. v. Chicago Gt. Western Ry. Co.*, 209 U. S. 108, 119. The practice of the Commission itself has been in accordance with these holdings. *Holmes & Co. v. So. Ry. Co.*, 8 Int. Com. Rep. 561. See JUDSON, INTERSTATE COMMERCE, 3 ed., § 440. But the amendment of 1910 of section 15 of the Act expressly provides that the burden of showing an increased rate is "reasonable" shall be on the carrier. But it would seem that "reasonable" must be distinguished from "discriminatory." For that the word "reasonable" has not a scope sufficiently broad to include discrimination appears from the classification and division of objections to rates in section 1, providing against "unreasonable" rates, section 2 providing against "discriminatory" rates, and section 3 providing against "preferential" rates. *Wickwire Steel Co. v. N. Y. C. R. Co.*, 30 Int. Com. Rep. 415, 420.

LEGACIES AND DEVISES — UNCERTAINTY — DEVISE TO UNBORN BASTARD OF SPECIFIED FATHER. — The testator in a codicil set aside a share of his estate "in case he should leave any other male child by the said Mary Ann," with whom he was unlawfully cohabiting. There was a male child *en ventre sa mère* at the testator's death. *Held*, that the bastard does not take. *In re Homer*, 115 L. T. R. 703.

A gift by deed or by will to future bastards of either the donor or a third person has in the past been held void. *Medworth v. Pope*, 27 Beav. 71; *Metham v. Duke of Devon*, 1 P. Wms. 529. See *Blodwell v. Edwards*, Cro. Eliz. 509, 510. The reason seems to be the policy against the encouragement of